
By: **Senators Pinsky, Brochin, and Garagiola**
Introduced and read first time: February 2, 2004
Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **State Government - Administrative Procedure Act - Proposed Regulations**

3 FOR the purpose of requiring agencies to submit proposed regulations to the
4 Department of Legislative Services; prohibiting the Joint Committee on
5 Administrative, Executive, and Legislative Review from approving a request for
6 emergency adoption of a proposed regulation during a certain period unless the
7 Governor makes a certain declaration; requiring the Committee to impose a
8 time limit, not to exceed a certain length, on the effectiveness of emergency
9 regulations; requiring the website of the General Assembly to include certain
10 information about certain emergency regulations the Committee has received;
11 requiring the Department of Legislative Services to maintain a list of members
12 of the public who have requested to receive notice of the Department's receipt of
13 certain emergency regulations; requiring the Department to provide certain
14 notice to certain members of the public; specifying the manner in which the
15 Department shall administer the list; requiring certain promulgating units to
16 provide copies of emergency regulations to members of the public, on request;
17 authorizing the Committee to take certain actions on specific provisions of
18 proposed regulations; and generally relating to the Administrative Procedure
19 Act and proposed regulations.

20 BY repealing and reenacting, with amendments,
21 Article - State Government
22 Section 10-110 and 10-111
23 Annotated Code of Maryland
24 (1999 Replacement Volume and 2003 Supplement)

25 BY adding to
26 Article - State Government
27 Section 10-111.2 and 10-118
28 Annotated Code of Maryland
29 (1999 Replacement Volume and 2003 Supplement)

30 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
31 MARYLAND, That the Laws of Maryland read as follows:

1

Article - State Government

2 10-110.

3 (a) This section does not apply to a regulation adopted under § 10-111(b) of
4 this subtitle.

5 (b) At least 15 days before the date a proposed regulation is submitted to the
6 Maryland Register for publication under § 10-112 of this subtitle, the promulgating
7 unit shall submit to the State Children's Environmental Health and Protection
8 Advisory Council established under § 13-1503 of the Health - General Article for
9 review any proposed regulations identified by the promulgating unit as having an
10 impact on environmental hazards affecting the health of children.

11 (c) At least 15 days before the date a proposed regulation is submitted to the
12 Maryland Register for publication under § 10-112 of this subtitle, the promulgating
13 unit shall submit the proposed regulation to the Committee AND THE DEPARTMENT
14 OF LEGISLATIVE SERVICES.

15 (d) (1) The Committee is not required to take any action with respect to a
16 proposed regulation submitted to it pursuant to subsection (b) of this section.

17 (2) Failure by the Committee to approve or disapprove the proposed
18 regulation during the period of preliminary review provided by subsection (b) of this
19 section may not be construed to mean that the Committee approves or disapproves
20 the proposed regulation.

21 (3) During the preliminary review period, the Committee may take any
22 action relating to the proposed regulation that the Committee is authorized to take
23 under §§ 10-111.1 and 10-112 of this subtitle.

24 (e) Prior to the date specified in subsection (b) of this section, the
25 promulgating unit is encouraged to submit the proposed regulation to the Committee
26 and to consult with the Committee concerning the form and content of that
27 regulation.

28 10-111.

29 (a) (1) Except as provided in subsection (b) of this section, a unit may not
30 adopt a proposed regulation until:

31 (i) after submission of the proposed regulation to the Committee
32 for preliminary review under § 10-110 of this subtitle; and

33 (ii) at least 45 days after its first publication in the Register.

34 (2) (i) If the Committee determines that an appropriate review cannot
35 reasonably be conducted within 45 days and that an additional period of review is
36 required, it may delay the adoption of the regulation by so notifying the promulgating

1 unit and the Division of State Documents, in writing, prior to the expiration of the
2 45-day period.

3 (ii) If notice is provided to the promulgating unit pursuant to
4 subparagraph (i) of this paragraph, the promulgating unit may not adopt the
5 regulation until it notifies the Committee, in writing, of its intention to adopt the
6 regulation and provides the Committee with a further period of review of the
7 regulation that terminates not earlier than the later of the following:

8 1. the 30th day following the notice provided BY THE
9 PROMULGATING UNIT under this subparagraph; or

10 2. the [75th] 105TH day following the initial publication of
11 the regulation in the Register.

12 (3) The promulgating unit shall permit public comment for at least 30
13 days of the 45-day period under paragraph (1)(ii) of this subsection.

14 (b) (1) The unit may adopt a proposed regulation immediately if the unit:

15 (i) declares that the emergency adoption is necessary;

16 (ii) submits the proposed regulation to the Committee AND THE
17 DEPARTMENT OF LEGISLATIVE SERVICES, together with the fiscal impact statement
18 required under subsection (c) of this section; and

19 (iii) has the approval of the Committee for the emergency adoption.

20 (2) (i) Subject to subparagraphs [(ii) and (iii)] (II), (III), AND (IV) of this
21 paragraph, the approval of the Committee may be given:

22 1. by a majority of its members who are present and voting
23 at a public hearing or meeting of the Committee; OR

24 2. IF STAFF OF THE COMMITTEE TRIES BUT IS UNABLE TO
25 CONTACT A MAJORITY OF THE MEMBERS OF THE COMMITTEE IN A TIMELY MANNER
26 AND IMMEDIATE ADOPTION IS NECESSARY TO PROTECT THE PUBLIC HEALTH OR
27 SAFETY, by its presiding Chairman OR, IF ITS PRESIDING CHAIRMAN IS
28 UNAVAILABLE, BY ITS CO-CHAIRMAN]; or

29 3. if its presiding Chairman is unavailable, by its
30 co-chairman].

31 (ii) If a member of the Committee requests a public hearing on the
32 emergency adoption of a regulation, the Committee shall hold a public hearing.

33 (iii) 1. If a public hearing is held on the emergency adoption of a
34 regulation, the Committee may not approve the emergency adoption except by a
35 majority vote of the members present and voting at the hearing or at a meeting of the
36 Committee subsequent to the hearing.

1 (iv) whether the emergency regulation imposes a mandate on a local
2 government unit.

3 (2) If the emergency regulation imposes a mandate on a local
4 government unit, the fiscal impact statement shall:

5 (i) indicate whether the regulation is required to comply with a
6 federal statutory or regulatory mandate;

7 (ii) if the information may be practicably obtained given the
8 emergency circumstances of the regulations, include an estimate of the impact of the
9 emergency regulation on the revenues and expenditures of local government units;
10 and

11 (iii) if applicable, and if the required data is available, include the
12 estimated effect on local property tax rates.

13 10-111.2.

14 (A) (1) THE WEBSITE OF THE GENERAL ASSEMBLY SHALL INCLUDE A LIST
15 OF ALL EMERGENCY REGULATIONS THE COMMITTEE HAS RECEIVED BUT HAS NOT
16 APPROVED.

17 (2) FOR EACH REGULATION, THE LIST SHALL INCLUDE:

18 (I) THE DATE THE COMMITTEE RECEIVED THE REGULATION;

19 (II) WHETHER A MEMBER OF THE COMMITTEE HAS REQUESTED A
20 PUBLIC HEARING;

21 (III) THE DATE OF ANY PUBLIC HEARING SCHEDULED;

22 (IV) THE DATE AND A SUMMARY OF ANY ACTION THE COMMITTEE
23 HAS TAKEN; AND

24 (V) THE NAME AND TELEPHONE NUMBER OF A MEMBER OF THE
25 COMMITTEE'S STAFF WHO CAN PROVIDE FURTHER INFORMATION.

26 (3) A REGULATION SHALL BE ADDED TO THE LIST WITHIN 5 BUSINESS
27 DAYS AFTER RECEIPT OF THE REGULATION BY THE COMMITTEE AND THE
28 DEPARTMENT OF LEGISLATIVE SERVICES.

29 (B) (1) THE DEPARTMENT OF LEGISLATIVE SERVICES SHALL MAINTAIN A
30 LIST OF MEMBERS OF THE PUBLIC WHO HAVE REQUESTED TO RECEIVE NOTICE
31 WHEN THE DEPARTMENT OF LEGISLATIVE SERVICES RECEIVES PROPOSED
32 REGULATIONS FOR WHICH THE PROMULGATING UNIT HAS REQUESTED EMERGENCY
33 ADOPTION.

34 (2) A MEMBER OF THE PUBLIC WHO REQUESTS NOTICE UNDER THIS
35 SUBSECTION SHALL SPECIFY:

1 (I) WHETHER THE INDIVIDUAL WANTS TO RECEIVE NOTICE BY
2 UNITED STATES MAIL OR ELECTRONIC MAIL; AND

3 (II) WHICH AGENCIES' REGULATIONS THE INDIVIDUAL WANTS TO
4 RECEIVE NOTICE OF RECEIPT.

5 (3) WITHIN 2 BUSINESS DAYS OF RECEIPT OF A PROPOSED REGULATION,
6 THE DEPARTMENT OF LEGISLATIVE SERVICES SHALL PROVIDE NOTICE TO MEMBERS
7 OF THE PUBLIC WHO HAVE REQUESTED NOTICE, AS SPECIFIED IN PARAGRAPH (2) OF
8 THIS SUBSECTION.

9 (4) THE DEPARTMENT OF LEGISLATIVE SERVICES:

10 (I) MAY IMPOSE A REASONABLE FEE FOR SENDING NOTICE UNDER
11 THIS SUBSECTION BY UNITED STATES MAIL; AND

12 (II) MAY NOT IMPOSE A FEE FOR SENDING NOTICE UNDER THIS
13 SECTION BY ELECTRONIC MAIL.

14 (5) UPON REQUEST, A PROMULGATING UNIT SHALL PROVIDE COPIES OF
15 EMERGENCY REGULATIONS TO MEMBERS OF THE PUBLIC.

16 10-118.

17 AFTER A PUBLIC HEARING ON A PROPOSED REGULATION, THE COMMITTEE
18 MAY APPROVE, DENY A REQUEST FOR EMERGENCY STATUS FOR, OPPOSE ADOPTION
19 OF, OR REQUEST A PROMULGATING UNIT TO DELAY ADOPTION OF SPECIFIC
20 PROVISIONS OF PROPOSED REGULATIONS.

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
22 effect October 1, 2004.